

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.990 OF 2003

Dattatraya Sadashiv Nage(deceased) ..Petitioners
through his LRs and anr.

V/s.

Parisa Sadashiv Nage & ors ..Respondents

Mr.S.S.Patwardhan for the petitioners

CORAM : R.V.MORE, J.

DATE : 25TH JUNE, 2007

P.C.

1. The petitioners in this Writ Petition are the original defendant Nos.1 & 2 in Special Civil Suit No.569 of 1997. The respondent No.1 is the original plaintiff. The suit was for partition and separate possession. During the pendency of the suit the respondent No.1/original plaintiff had filed an application for appointment of Court Receiver. Said application was rejected by the trial Court. The respondent No.1/original plaintiff therefore, carried Miscellaneous Civil Appeal No.111 of 1999 before the Lower Appellate Court and the Lower Appellate Court ultimately

appointed Court Receiver to manage the suit properties. The petitioners being aggrieved preferred Civil Revision Application No.746 of 2000. This Civil Revision Application was admitted. During pendency of this C.R.A No.746 of 2000 the above said Special Civil Suit No.569 of 1997 came to be disposed of. Therefore C.R.A.No.746 of 2000 became infructuous and same was dismissed as infructuous.

2. The present petitioners filed Regular Civil Appeal No.137 of 2001 challenging the trial Court's decree. During pendency of this Regular Civil Appeal No.137 of 2001, the respondent No.1/original plaintiff again filed an application at Exh.41 for appointment of Court Receiver. An application at Exh.47 was filed by the respondent No.2/original defendant No.2 for maintenance. The Lower Appellate Court by it's order dated 17th January, 2003 was pleased to appoint Court Receiver. The Court Receiver was authorized to collect rent from tenants regularly and out of deposit of amount, an amount of Rs.1000/- is directed to be paid to the

respondent No.2, Sonabai.

3. The above said order dated 17th January, 2003 is impugned in the present Writ Petition. The aforesaid Writ Petition was admitted on 17th June, 2003 and interim relief in terms of prayer clause (d) was granted on a condition that the petitioners shall to pay on month to month basis to the respondent No.2 a sum of Rs.1000/-.

4. [Mr.S.S.Patwardhan](#), the learned counsel appearing for the petitioners states that Regular Civil Appeal No.137 of 2001 is already disposed of and the petitioner has filed the Second Appeal No.115 of 2007. There is no doubt that the order impugned in the Writ Petition was to operate during the pendency of the above said Regular Civil Appeal No.137 of 2001. In any case, the impugned order is merged in the final order passed while disposing of Regular Civil Appeal No.137 of 2001. In this view of the matter, I am of the opinion that the present Writ Petition has also become infructuous. Needless to mention that the respondent

No.1/original plaintiff is at liberty to prefer a separate application for similar relief in the above said Second Appeal No.115 of 2007, if so advised.

5. **Mr.S.S.Patwardhan**, the learned counsel appearing for the petitioners specifically makes a statement that at the time of admission of Writ Petition he had undertaken to pay an amount of Rs.1000/- to the respondent No.2 per month. He has stated that he is paying this amount to the respondent No.2 as per the order dated 17th January, 2003 passed at the time of admission. He further makes a statement that he will continue to pay this amount of Rs.1000/- to the respondent No.2 during pendency of the Second Appeal No.115 of 2007. The statement accepted.

6. In the above facts and circumstances, I pass the following order.

O R D E R

- A. Petition is disposed of as become infructuous. The Court Receiver is discharged.
- B. The respondent No.1 is at liberty to file a fresh application similar in nature in the Second Appeal No.115 of 2007, if so advised.
- C. Statement of **Mr.S.S.Patwardhan**, learned counsel for the petitioners that he will continue to pay Rs.1000/- to the respondent No.2, Sonabai during pendency of this Second Appeal No.115 of 2007 is accepted. No order as to costs.

(R.V.MORE, J.)